

CHAPTER 19

PAYROLL DEDUCTION DETERMINATIONS--REPRESENTATION FEES

Authority

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SUBCHAPTER 1. NATURE OF PROCEEDINGS

19:19-1.1 Nature of proceedings

(a) N.J.S.A. 34:13A-5.5 requires negotiations over the subject of requiring employees in a negotiations unit who are not members of their majority representative to pay a representation fee in lieu of dues to their majority representative. As amended by P.L. 2002, c. 46, effective August 1, 2002, that section permits the majority representative to petition the Commission to conduct an investigation if no agreement for representation fees in lieu of dues by payroll deduction is reached during negotiations. If the Commission determines that a majority of the negotiations unit employees are voluntary dues paying members of the majority representative and that the majority representative maintains a demand and return system as required by N.J.S.A. 34:13A-5.5(c) and 5.6, the Commission shall order the public employer to institute a payroll deduction of the representation fee in lieu of dues from the wages or salaries of the negotiations unit employees who are not members of the majority representative.

(b) These procedures are intended to avoid protracted administrative litigation. Proceedings seeking payroll deductions of representation fees will normally lend themselves to expeditious disposition on the basis of the parties' submissions, which these procedures are intended to accommodate.

SUBCHAPTER 2. INITIATION OF PROCEEDINGS

19:19-2.1 Who may file

Only the majority representative may petition for a payroll deduction determination. The majority representative must file an original and four copies of a petition for payroll deduction determination, together with a proof of service of a copy of the petition on the employer. A copy of each petition shall be retained in a public docket until the case is closed.

19:19-2.2 Contents of petition for payroll deduction determination

(a) A petition for payroll deduction determination shall:

1. Specify the full name, address, and telephone number of the petitioning majority representative;

2. Specify the full name, address and telephone number of the employer;

3. Specify that the petitioner and the employer have negotiated concerning the subject of representation

fees in lieu of dues and that no agreement requiring such payments has been reached;

4. Specify the collective negotiations unit description and the number of employees in the unit represented by the petitioner, and attach any pertinent certification of majority representative issued by the Commission or recognition agreement executed by the employer or recognition clause contained in the parties' current or most recent collective negotiations agreement;

5. List the employees in the negotiations unit who are voluntary dues paying members of the majority representative as of the time of the filing of the petition, and attach any documents pertinent to verifying that list; and

6. Provide a written copy of the demand and return system, as required by N.J.A.C. 19:17-3.3(a), to be used by the majority representative if payroll deductions are ordered.

(b) A petition shall be in writing and the representative of the party filing the petition shall make this dated and signed certification: "I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief."

SUBCHAPTER 3. PROCEDURE

19:19-3.1 Amendment; withdrawal; dismissal; consolidation

(a) The Chairman or such other Commission designee may permit the petitioner to amend the petition at any time upon such terms as may be deemed just. Filing, service, and proof of service of such amended petition shall conform to the provisions of these rules relating to the original petition for payroll deduction determination.

(b) A petition for payroll deduction determination shall be dismissed and the case closed if the petitioner files a notice of withdrawal. Unless otherwise stated in the notice of withdrawal, the dismissal is without prejudice.

(c) The Chairman or such other Commission designee, in his or her discretion, may dismiss the petition on the grounds of insufficient cause for determination, failure to prosecute, or other good reason.

19:19-3.2 Response

(a) Within 10 days from receiving service of the petition, the respondent employer shall file a response. The response shall:

1. Specify whether the petitioner and the employer have negotiated concerning the subject of

representation fees in lieu of dues and whether an agreement requiring such payments has been reached;

2. Specify the collective negotiations unit description and the number of employees in the unit represented by the petitioner, and attach any documents pertinent to defining the collective negotiations unit and not already supplied by the petitioner;

3. Provide a list of all the employees in the negotiations unit, together with their job titles, as of the time of the filing of the petition;

4. Verify or correct where possible the list of the negotiations unit employees who are voluntary dues paying members of the majority representative as of the time of the filing of the petition and attach any documents pertinent to establishing such a list and not already supplied by the petitioner; and

5. State any other facts which the respondent believes are material to a payroll deduction determination.

(b) If no response is filed, all allegations in the petition shall be deemed to be admitted to be true and shall be so found by the Commission, unless good cause to the contrary is shown. This mandate also applies to any allegation not specifically denied or explained in a response, unless the respondent states that it is without knowledge of the allegation.

(c) The response shall be in writing and the representative of the party filing the response shall make this dated and signed certification: "I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief."

19:19-3.3 Where to file; number of copies; service

An original and four copies of the response shall be filed with the Commission, together with proof of service of a copy of the response on the petitioner.

19:19-3.4 Amendment to response

The Chairman of the Commission or such other Commission designee may permit the respondent to amend its response at any time upon such terms as may be deemed just.

19:19-3.5 Reply

Within five days of receipt of the response, the petitioner may file an original and four copies of a reply and any supporting documents and affidavits together with proof of service of a copy of the reply on the respondent. No further replies shall be permitted without permission of the Chairman or such other Commission designee.

19:19-3.6 Investigation; disposition

(a) A Commission designee shall conduct an investigation. The designee may ask the parties to attend informal conferences and to submit additional documents, statements of position, or briefs on material legal issues.

(b) In addition, the designee may hold a hearing if it appears that there are substantial and material factual issues requiring a hearing to resolve. Such a hearing shall be governed by the provisions of N.J.A.C. 19:11-6 on representation proceedings, insofar as applicable.

(c) After the investigation or hearing, the designee shall issue written findings as to whether a majority of the negotiations unit employees are voluntary dues paying members of the majority representative and whether the majority representative maintains a demand and return system as required by N.J.S.A. 34:13A-5.5 and 5.6 and either:

1. Request the petitioner to withdraw the petition, or in the absence of withdrawal, dismiss the petition, pursuant to N.J.A.C. 19:19-3.2;

2. Order the public employer to institute a payroll deduction of the representation fee in lieu of dues from the wages or salaries of the negotiations unit employees who are not members of the majority representative; or

3. Take other measures the designee deems appropriate.

SUBCHAPTER 4. REQUEST FOR COMMISSION REVIEW

19:19-4.1 Request for Commission review

(a) Within 10 days of service on it of the designee's order, any aggrieved party may file a request for review with the Commission.

(b) An original and nine copies of a request for review shall be filed with the Commission, together with proof of service of a copy on the other party. The filing of a request for review with the Commission shall not operate, unless otherwise ordered by the Commission, as a stay of any action taken, ordered or directed by the designee.

19:19-4.2 Grounds for granting a request for review

(a) The Chairman may grant a request for review. A request for review will be granted only for one or more of these compelling reasons:

1. A substantial question of law is raised concerning the interpretation or administration of the Act or these rules;

2. The designee's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of the party seeking review;

3. The conduct of the hearing or any ruling made in connection with the proceeding may have resulted in prejudicial error; and/or

4. An important Commission rule or policy should be reconsidered.

19:19-4.3 Contents of request for review; timely presentment of facts

(a) A request for review must be a self-contained document enabling the Commission or Chairman to rule on the basis of its contents.

(b) A request must contain a summary of all evidence and rulings bearing on the issues, together with page citations from any official transcript, and a summary of argument.

(c) A request may not raise any issue or allege any facts not timely presented to the designee, unless the facts alleged are newly discovered and could not with reasonable diligence have been discovered in time to be so presented.

(d) A request for review must specify both the grounds supporting review and address the merits of the issues for which relief is sought.

19:19-4.4 Statement in opposition to a request for review

Within seven days of service on it of a request for review, any party may file with the Commission an original and nine copies of a statement in opposition to the request, together with proof of service of a copy on all other parties.

19:19-4.5 Waiver of right to request review

(a) The parties may, at any time, waive their right to request review. Failure to request review shall preclude such parties from relitigating, in any Commission proceeding, any issue that was or could have been raised in the proceeding.

(b) A Commission order disposing of a case in its entirety, or a Commission order denying a request for review of an order issued by the Commission designee disposing of a case in its entirety, shall constitute the final administrative determination of the Commission.

19:19-4.6 Stay of decision; record before the Commission; withdrawal

(a) The granting of a request for review shall not stay the designee's decision unless otherwise ordered by the Commission.

(b) Where review has been granted, the Commission will consider the entire record in light of the grounds relied on for review.

(c) Any request for review may be withdrawn with the permission of the Commission before issuance of a Commission decision.

19:19-4.7 Oral argument

Any request for oral argument before the Commission shall be in writing on a separate piece of paper and filed simultaneously with the request for review. The Commission shall notify the parties if the request for oral argument is granted and of the time and place of any oral argument.

19:19-4.8 Decision by the Commission

Where review has been granted, the Commission shall proceed upon the record to decide the issues referred to it or to review the decision of the designee. It shall affirm or reverse the decision of the designee, in whole or in part, or make such other disposition of the matter as it deems appropriate.

SUBCHAPTER 5. TRANSFER TO THE COMMISSION; RECONSIDERATION

19:19-5.1 Transfer to the Commission on its own motion

The Commission may, at any time and on its own motion, transfer a case to itself for appropriate action.

19:19-5.2 Motion for Commission reconsideration

A party may move for reconsideration of a Commission decision. The movant shall specify the extraordinary circumstances warranting reconsideration and the pages of the record it relies on. Any motion pursuant to this section shall be filed within 15 days of service of the Commission decision, together with proof of service of a copy on all other parties. Any party opposing reconsideration may file a response within five days of service on it of the motion, together with proof of service of a copy on all other parties. The filing and pendency of a motion for reconsideration shall not operate to stay the effectiveness of the Commission decision, unless otherwise ordered by the Commission. A motion for reconsideration need not be filed to exhaust administrative remedies.